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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE:

CHAPTER 7

JOHN W. WELLS,

CASE No. 22-22472 (CGM)

DEBTOR
-----X

**AFFIRMATION IN SUPPORT OF MOTION TO AMEND ORDER ENTERED
ON OCTOBER 26, 2023 APPROVING STIPULATION TO SURRENDER REAL
PROPERTY PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(b)(1)**

**TO: THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE:**

JAMES J. RUFO, an attorney duly admitted to practice before this Court, upon
information and belief, affirms as follow:

1. On July 22, 2022 (the “Petition Date”), the debtor John W. Wells (the “Debtor”) filed a voluntary petition for relief under chapter 13 of the United States Bankruptcy Code (the “Bankruptcy Code”), and an order for relief was duly entered.
2. Thereafter, on March 21, 2023, the Debtor voluntarily converted his case to chapter 7 at Dkt. #55.
3. On March 22, 2023, Howard P. Magaliff was appointed as the Chapter 7 Trustee (the “Trustee”).
4. On the Petition Date, the Debtor and his non-debtor spouse Shelley Grosse Wells owned the real property located at 7 Fernwood Avenue, Rye, NY 10580 (the “Property”).
5. On the Petition Date, the Debtor resided at the Property.
6. On or about August 24, 2023, secured creditor SN Servicing Corporation as servicer for U.S. Bank Trust National Association, as Trustee of the Bungalow Series IV Trust

(“SN”) filed a Motion (the “Motion”) to Approve Loan Modification with SN Servicing Corporation Stipulation to Surrender at Dkt. # 76.

7. The Motion included a copy of the Stipulation to Surrender Real Property (the “Stipulation”) that provided certain language. (Annexed hereto as **Exhibit “A”** is a copy of the Stipulation)

8. Specifically, the third decretal paragraph of the Stipulation provides, in relevant part, the following:

ORDERED, that in consideration for the Debtor and all occupants to timely and orderly vacate and turnover full possession of the Property to Secured Creditor, Secured Creditor shall pay the sum of \$50,000.00 (the “Cash for Keys”) to be disbursed as follows:

- a. \$25,000.00 of the Cash for Keys to be paid by Secured Creditor within 30 calendar days of entry of this Order to the Debtor (check shall be made payable to Debtor John W. Wells) and delivered to the Debtor’s Attorney James J. Rufo, The Law Office of James J. Rufo, 1133 Westchester Avenue, Suite N202, White Plains, NY 10604, to assist the Debtor with securing a new place to live and pay any costs and expenses associated with vacating the Property.
- b. \$25,000.00 of the Cash for Keys to be paid to the Debtor as indicated in (a) above if and only if: . . .

See **Exhibit A**, para. 3, pg. 2.

9. On or about August 25, 2023, SN filed a Motion (the “Amended Motion”) to Approve Loan Modification with SN Servicing Corporation Amended Stipulation at Dkt. # 77. The Amended Motion was filed because the Stipulation filed with the Motion was incorrect and did not contain the language agreed upon by the parties.

10. The Amended Motion included a copy of the Stipulation to Surrender Real Property (the “Amended Stipulation”) provided certain language agreed upon by the parties. (Annexed hereto as **Exhibit “B”** is a copy of the Amended Stipulation).

11. Specifically, the third decretal paragraph of the Amended Stipulation provides, in relevant part, the following:

ORDERED, that in consideration for the Debtor and all occupants to timely and orderly vacate and turnover full possession of the Property to Secured Creditor, Secured Creditor shall pay the sum of \$50,000.00 (the “Cash for Keys”) to be disbursed as follows:

- a. \$25,000.00 of the Cash for Keys is attributable to the Debtor’s interest in the Property, and \$25,000.00 of the Cash for Keys is attributable to the Borrower’s interest in the Property. The non-exempt portion of the Cash for Keys attributable to the Debtor’s interest totaling \$9,575.00 shall be paid by Secured Creditor within 30 calendar days of entry of this Order directly to the Chapter 7 Trustee (check shall be made payable to Howard P. Magaliff - Chapter 7 Trustee) and delivered to Howard P. Magaliff - Chapter 7 Trustee, 335 Madison Avenue, 9th Floor, New York, NY 10017.
- b. \$15,425.00 of the Cash for Keys shall be paid by Secured Creditor within 30 calendar days of entry of this Order to the Debtor (check shall be made payable to Debtor John W. Wells) and delivered to the Debtor’s Attorney James J. Rufo, The Law Office of James J. Rufo, 1133 Westchester Avenue, Suite N202, White Plains, NY 10604, to assist the Debtor with securing a new place to live and pay any costs and expenses associated with vacating the Property.
- c. \$25,000.00 of the Cash for Keys to be paid to the Borrower (check shall be made payable to Borrower Shelley Grose Wells) and delivered to the Debtor’s Attorney James J. Rufo, The Law Office of James J. Rufo, 1133 Westchester Avenue, Suite N202, White Plains, NY 10604 if and only if: . . .

See **Exhibit B** para. 3, pgs. 2-3.

12. On October 26, 2023, the Stipulation to Surrender was ‘So Ordered’ (the “So Ordered Stipulation”) and entered on this Court’s docket at Dkt. # 81. (Annexed hereto as **Exhibit “C”** is a copy of the So Ordered Stipulation).

13. The third decretal paragraph of the So Ordered Stipulation provides, in relevant part, the following:

ORDERED, that in consideration for the Debtor and all occupants to timely and orderly vacate and turnover full possession of the Property to Secured Creditor, Secured Creditor shall pay the sum of \$50,000.00 (the “Cash for Keys”) to be disbursed as follows:

- c. \$25,000.00 of the Cash for Keys to be paid by Secured Creditor within 30 calendar days of entry of this Order to the Debtor (check shall be made payable to Debtor John W. Wells) and delivered to the Debtor’s Attorney James J. Rufo, The Law Office of James J. Rufo, 1133 Westchester Avenue, Suite N202, White Plains, NY 10604, to assist the

Debtor with securing a new place to live and pay any costs
and expenses associated with vacating the Property.

- d. \$25,000.00 of the Cash for Keys to be paid to the Debtor as
indicated in (a) above if and only if: . . .

See **Exhibit C**, para. 3, pgs. 2-3.

14. The language contained in para. 3 of the So Ordered Stipulation does not include
the language that was agreed upon by the parties as set forth in the Amended Stipulation.

15. The Trustee is unable to close the Debtor's case as a result of the So Ordered
Stipulation having been submitted in error and entered by the Court. In addition, SN is unable to
provide the non-debtor spouse with the final payment called for in the Stipulation.

16. Accordingly, the debtor respectfully requests that this Court amend the So
Ordered Stipulation and enter the Amended Stipulation in its place.

WHEREFORE, the debtor, John W. Wells respectfully requests that an Order be entered
pursuant to Federal Rule of Civil Procedure 60(b)(1) Amending the Order entered by this Court
on October 26, 2023 at Dkt. #81, for the reasons having been set forth herein; and for such other
and further relief as to the Court may seem just and proper.

Dated: White Plains, NY
October 24, 2024

Respectfully submitted,

By: /s/ James J. Rufo
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